

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION**

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IN RE: SUBPOENA ISSUED TO MONTANA  
DEPT. OF HEALTH AND HUMAN  
SERVICES

MCV 06-22-M-JCL

FINDINGS & RECOMMENDATION  
OF UNITED STATES  
MAGISTRATE JUDGE

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The Spring Creek Lodge Academy (Academy) has moved to intervene and quash a non-party subpoena served on the Montana Department of Health and Human Services (Department) by the plaintiff in a civil action pending in another district. The Academy seeks permission to intervene in the underlying civil action pursuant to Fed. R. Civ. P. 24(a) for the limited purposes of quashing the subpoena. The Academy then asks that this Court quash the subpoena pursuant to Fed. R. Civ. P. 45(c)(3)(A)(iii), which authorizes such relief if the subpoena "requires disclosure of privileged or other protected matter and no exception or waiver applies."

Approximately one week after the Academy filed its motion, the Department filed its own motion to modify or quash the subpoena served upon it by Thomas Houlahan, who is the plaintiff in a civil action now pending in the United States District Court for the District of Columbia. Dept's. Mot. to Quash (Nov. 6, 2006), MC-06-23-M-JCL. This Court has recommended that the Department's motion to quash the subpoena be granted on the basis that the confidential records it requests are not relevant to the issues in the underlying action or otherwise necessary to their resolution. Findings and Recommendation (Dec. 6, 2006), MC-06-23-M-JCL. In light of that recommendation, the Academy's motion to intervene and quash is moot. Accordingly,

**IT IS RECOMMENDED** that the Academy's motion to intervene and quash be **DENIED AS MOOT**.

NOW, THEREFORE, IT IS ORDERED that the Clerk shall serve a copy of the Findings and Recommendation of the United States Magistrate Judge upon the parties. The parties are advised that pursuant to 28 U.S.C. § 636, any objections to these findings must be filed with the Clerk of Court and copies served on opposing counsel within ten (10) days after receipt hereof, or objection is waived.

DONE and DATED this 6<sup>th</sup> day of December, 2006

/s/ Jeremiah C. Lynch  
Jeremiah C. Lynch  
United States Magistrate Judge